No 664
23/10/99

FERRIES.*

1. It is hereby notified that the limits of each district for the purposes of clause 2 of Section 16 of the Bombay Ferry Act (No. II of 1868)† shall be co-extensive with the several Collectorates. (G. N., G. D., dated 18th August 1869.)

2. The Right Honourable the Governor in Council is pleased to delegate to the Commissioner in Sind, under Section XVII of Bombay Act II of 1868, the powers of Government contemplated in Sections VI and XII of the said Act. (G. N., G. D., dated 12th October 1869; *vide* G. R., G. D., No. 2400 of the same date.)

3. In the Kánara Collectorate toll should be levied on bales of cotton coming to the ferry on carts and bullocks which do not cross the ferry themselves, in accordance with the following schedule:—

	At ferries Class II.	At ferries Class III.	At ferries Class IV.
	Pies.	Pies.	Pies.
Cotton docras on carts	4	3	3
Do. brought on bullocks, horned cattle, horses, tattoos and mules.	3	2	2
Pressed bales			

(G. R., G. D., No. 387, dated 4th February 1871.)

4. "Ferry" is defined in Wharton's Law Lexicon as "the right to carry persons and their goods in boats *across* a river and to take toll for such carriage." The ordinary meaning of the word "across" as given in the Dictionaries is "from side to side." Bombay Act II of 1868 is an Act to amend the law relating to public ferries. It nowhere defines what is a ferry, but Section 2 empowers Government to declare what "Ferries" are "Public Ferries" and also to establish any new "Public Ferry," or discontinue any existing "Public Ferry." The word "Ferry" must therefore be given its ordinary generally recognized meaning, and the wording of Section 14 of the Act, which prescribes a penalty for any one conveying either persons or goods, &c., *across* any creek or river to any point on the *opposite* shore or bank not being more than three miles on either side *above* or *below* any public ferry, supplies abundant proof, if any were needed, that the Act itself intended the meaning of the word to be so understood. It is not competent to Government under the Act to declare that to be a ferry which is not so. (L. R. No. 138 of 1874; *vide* G. R., G. D., No. 2747, dated 23rd September 1874).

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* This subject was dealt with by the General Department up to the end of February 1893.

† The Act was extended to Sind by Government Notification, General Department, dated 27th January 1869. Section 16 of the Act has been repealed by Act I of 1884.

5. The word 'Ferry' is not defined in Bombay Act II of 1868, unless the language of Section 14 is to be taken as amounting to a definition. That section imposes a penalty on any one 'conveying for hire any passengers, animals, carts, carriage or goods *across any creek or river* within the Presidency of Bombay to any point on the opposite shore or bank, not being more than three miles on either side above or below any public ferry, without the license of the Collector.' From this, at all events, it would appear that the Legislature used the word 'Ferry' in its ordinary sense of a way across water. The ordinary sense is also the legal sense. In the case of *Newton* v. *Cubitt* (12 C. B. A. S., 58) Mr. Justice Willes says: 'A ferry exists in respect of persons using a right of way, where the line of way is across water. There must be a line of way on land, coming to a landing place on the water's edge; or where the ferry is from or to a township, from or to one or more landing places in the township. The franchise is established to secure convenient passage; and the exclusive right is given because in an unpopulous place there might not be profit sufficient to maintain the boat if there was no monopoly. The ferry is unconnected with the occupation of land, and exists only in respect of persons using the right of way. The questions whence they come and whither they go, are irrelevant to the exercise of that right; and the ferryman has no incohate right in respect of any of them, unless they come to his passage.'

A similar definition of a ferry is given by Vice-Chancellor Kindersley in the case of *Letton* v. *Goodden* (L. R., 2 Eq., 130): 'A ferry has been said to be the continuation of a public highway across a river or other water, for the purpose of public traffic, from the termination of the highway on the one side to its recommencement on the other side.'

Upon these authorities, a public ferry under Bombay Act II of 1868 must be across a creek or river.

(Adv. Gen. No. 81, dated 11th November 1874; *vide* G. R., G. D., No. 1726, dated 9th June 1875.)

6. There is nothing contradictory in the fact of a steamer being both a ferry-boat and a coasting vessel, or being subject to the Sea Customs Act, 1878, as well as to the Bombay Ferries Act, 1868. (L. R., No. 399, dated 30th March 1883; *vide* G. R. No. 2938, dated 14th April 1883).

7. Ferry steamers and other small vessels plying in the Bombay Harbour are subject to the Inland Steam Vessels Act, 1884. (G. R., Marine Dept., No. 280, dated 14th October 1891, and G. R., G. D., No. 3936, dated 7th November 1891).

8. Monopolies are void at common law even when granted by the Crown. It requires in England the concurrence of the whole legislature to legislate them.

Brice on *Ultrâ Vires*, 557; cf. Smith's Leading Cases, Vol. I; *Mitchel* v. *Reynolds*; Sec. 27, Contract Act, 1872.

FERRIES.]

All rivers the soil of which belongs to the Crown, if navigable, are public, and the public have a right to navigate, nor can the Crown prevent them from doing so.

Vide Miles v. *Rose*, 5 Taunton, 705; Phear on Rights of Wák, 91; Smith's Leading Cases, Vol. II, *Dovastom* v. *Payne*.

If the river is not a highway, it is probable that difficulties would arise in connection with the rights of riparian proprietors.

Bourke v. *Davis*, 44 Ch. D., 110.

(L. R. No. 1508, dated 17th October 1893; *vide* G. R. No. 8399, dated 16th November 1893.)

9. The following is the table of fares levied for the conveyance of bullocks, carts, &c., across the Mhye in the public ferry at Páli in the Thásra Táluka of the Kaira District:—

	Rs.	a.	p.
Laden tattoos, horned cattle, and mules ...	0	2	0
Horses, laden and unladen	0	2	0
Unladen tattoos, horned cattle, and mules.	0	1	0
Asses, unladen and laden	0	1	0
Camels, unladen and laden	0	3	0
Goats and sheep	0	0	3
Laden carts and carriages of any sort ...	0	8	0
Unladen carts and carriages of any sort ...	0	5	0
Palanquins with hamáls	0	8	0
Tonjon or native palna with hamáls ...	0	4	0

(G. R., G. D., No. 2344, dated 5th August 1875.)

10. Local Boards must be counted amongst 'Her Majesty's subjects residing within the Presidency of Bombay,' and therefore vessels belonging to them are liable to be registered under Act XIX of 1838, if they are employed in such places as would render them liable to be registered under that Act if they were the property of private owners.

The Act applies to 'harbour craft' and to vessels 'employed on the coasts,' *i.e.*, on the sea coast. It does not apply to vessels employed exclusively on rivers and creeks; unless they ply to places which, although situated on such rivers or creeks, may reasonably be held to be on the sea-coast.

(L. R. No. 261, dated 23rd February 1888; *vide* G. R. No. 1607, dated 8th March 1888.)

11. On the question whether Section 14 of the Bombay Ferries Act, II of 1868, makes it penal for a person to let a boat for hire, within three miles of a public ferry without a license, the following opinion was recorded by the Remembrancer of Legal Affairs:—

"I would submit that the question cannot be finally settled except by judicial decision, and the Courts could not, of course, be bound by any opinion I might form on the subject.

9 B. I. L. R., 97.
9 B. I. L. R., 558.
10 B. I. L. R., 78.

"But as it may be desired for executive action I may state my opinion that Section 14 refers only to conveyance for hire, and not to the letting of boats for hire.

"In conveyance for hire, the person contracting to convey takes the responsibility of conveying on himself. In letting

for hire, he makes no such contract. Bombay Act II of 1878, Section 2, amending Bombay Act II of 1868, shows that conveyance may be otherwise than by boat.

"I think as a penal enactment must be construed strictly, Section 14 refers *only* to '*conveying* for hire' and not to the supplying another, whether for hire or otherwise, with the means of conveying himself or his friends.

"The exception in Section 14 refers only to that part of Section 13 which treats of 'conveying.' But there is nothing in Section 14 which renders it penal for a man to convey himself, his friends, servants or goods by any means at his disposal, or to supply any person with such means."

(L. R. No. 1325, dated 12th December 1888; *vide* G. R., G. D., No. 4579, dated 26th December 1888.)

12. Tolls should be levied at the public ferries between Thána and Bassein, Kalyán and Bassein, and Bhiwndi and Bassein at the following rates:—

For adults	...	...	... 8 annas each.
For children	...	...	... 4 annas each.
For infants in arms	...	...	... Free.

(G. Rs., G. D., Nos. 2552, dated 29th October 1869, and 2852, dated 22nd November 1870.)

13. Toll should be levied at the special ferries in the Thána Collectorate at the rates given in the following schedules:—

No.	Description.	SPECIAL FERRIES.											
		Dongree to Bassein.			Mahool to Bombay.			Datewra.			Ghorbandar to Basseen.			Karanja to Antora.		
		Rs.	a.	p.	Rs.	a.	p.	Rs.	a.	p.	Rs.	a.	p.	Rs.	a.	p.
1	Four-wheeled carriages each..	1	0	0	1	0	0	0	12	0	0	12	0	0	12	0
2	Two do. do. on springs.	0	12	0	0	12	0	0	8	0	0	8	0	0	8	0
3	Laden carts with or without springs, each	0	8	0	0	8	0	0	8	0	0	8	0	0	8	0
4	Unladen do. do. do. ...	0	8	0	0	8	0	0	6	0	0	6	0	0	6	0
5	Laden tattoos, horned cattle and mules each	0	6	0	0	6	0	0	5	0	0	5	0	0	5	0
6	Horses, laden or unladen, each	0	6	0	0	6	0	0	5	0	0	5	0	0	5	0
7	Unladen tattoos, horned cattle or mules each	0	4	0	0	4	0	0	3	0	0	3	0	0	3	0
8	Asses, laden or unladen, each	0	3	0	0	3	0	0	2	0	0	2	0	0	2	0
9	Camels, laden or unladen, each	1	0	0	1	0	0	0	12	0	0	12	0	0	12	0
10	Sheep, goats and pigs, each ...	0	1	0	0	1	0	0	0	6	0	0	6	0	0	6
11	Palanquin (or mena) with hamáls	1	8	0	1	8	0	1	0	0	1	0	0	1	0	0
12	Tonjon, native palna or doly with hamáls	0	12	0	0	12	0	0	8	0	0	8	0	0	8	0
13	Passengers other than little children each	0	1	0	0	1	0	0	0	6	0	0	6	0	0	6

(G. R., G. D., No. 1762, dated 27th July 1870.)

14. Section 3 of Act II of 1868 directs that tolls should be levied on *all* passengers carried over any public ferry except soldiers in uniform on duty, Police officers in uniform on duty and persons in custody of the Police. If it is desired to extend the exemption from toll to other classes of public servants, Government can do so by Resolution as regards public ferries under direct Government management; but in regard to ferries leased to private individuals, any further exemption than the Act provides would need to be made a condition of the lease under Section 5 of the Act. (L. R. No. 67, dated 10th June 1869; *vide* G. R., G. D., No. 1622, dated 8th July 1869.)

15. The Local Boards Bill originally contained a section under which every member of a Local Board was entitled to the actual expenses incurred by him in travelling for the fulfilment of any duty under the Act, but this section was removed from the Bill by desire of the Secretary of State. The exemption of members of Local Boards, travelling on Local Fund business, from road and ferry tolls would be equivalent to a grant of part of their expenses which the Secretary of State disallowed, and is also open to other obvious objections. (G. R. No. 7680, dated 22nd September 1885.)*

16. The provision of Government Notification, General Department, No. 1582, dated 2nd May 1882, which directs that the exemption from payment of ferry tolls which is limited to Government officers and their actual conveyance 'is only to extend to the one horse on which the officer may happen to be riding,' is not applicable to an officer whose 'actual conveyance when he has to cross a ferry happens to be, say, a tonga and a pair of ponies or a camel. The object of the provision is to prevent any misapplication of the term 'actual conveyance.' For instance, an officer may require six riding horses to accomplish a journey. In crossing a ferry the horse he happens to be riding is exempt, but not the other five horses. So, too, if an officer is making a journey by stages using various modes of conveyance, the particular one which he is actually using when he has to cross a ferry alone is exempt from payment of toll, whether it happens to be a carriage and pair, or a riding horse, or a camel, or an elephant, or any other kind of conveyance. (L. R., No. 658, dated 8th June 1882; *vide* G. R., G. D., No. 2294, dated 20th idem.)

17. One person taking care of a horse on a vehicle, but not more than one, may properly be regarded as merely incidental, and in respect of such person no ferry toll should be leviable, but all other persons with the horse or vehicle should be charged for separately. (G. R., G. D., No. 839, dated 25th February 1889.)

18. Forest guards, Foresters and Forest Inspectors when actually travelling on duty are exempt from the payment of tolls at public ferries and on roads. Office Kárkuns are not to claim exemption under this ruling. (G. Rs. Nos. 570, dated 29th January 1877, 1477, dated 7th March 1877, 3417, dated 6th July 1878, and 3777, dated 26th May 1886.)

* Under the ruling contained in this Resolution, officers required to attend meetings of Local Boards under Section 33 of the Local Boards Act cannot be allowed travelling expenses (G. R. No. 3220, dated 1st May 1889), and the ruling is equally applicable to officers required to attend meetings of Municipal Boards (G. R., F. D., No. 2595, dated 20th June 1889). When, however, an officer of the Educational Department has to travel to a place where he has to attend a meeting of the Local or Municipal Board in addition to discharging inspection or other duties pertaining to his office, he can draw the travelling allowance admissible to him under the rules. (G. R., F. D., No. 3338, dated 2nd September 1889.)

19. In exercise of the powers conferred by Section 3, clause (*d*), of the Bombay Ferries Act II of 1868, as amended by Bombay Act II of 1878, the Governor in Council is pleased to declare that, in addition to the persons exempted by Section 3 of the said Act and by the notifications passed thereunder, the peon attached to the office of the Vahivatdár of the village of Sangam Máhuli in the Aundh State shall, while employed in conveying official letters to and from the Post Office at Kshetra Máhuli by the ferry-boat plying between Sangam Máhuli and Kshetra Máhuli during the monsoon, be exempt from payment of ferry tolls otherwise demandable under the said Bombay Act II of 1868 amended as aforesaid, during the life-time of Meherban Shrinivasrao Parashram Pandit Pant Pratinidhi, the present Chief of Aundh. (G. Notn. No. 4160, dated 2nd June 1897.)

20. When a ferry is partly in one district and partly in another, the proceeds should in all cases, after deducting cost of maintenance, be divided equally between the two districts, the expenses being also jointly shared. (G. R., G. D., No. 1984, dated 18th August 1869.)*

21. When a ferry plies between British territory and a Native State, the proceeds should be equally divided between the two Governments.

This rule should be followed in regard to all ferries hereafter established, and the States concerned should be asked to acquiesce in it before any disputes arise as to the division of profits. It may also be applied to any ferries which may have been recently established. In regard, however, to a ferry like that at Siddápur in the Sángli State, of which the proceeds have been enjoyed by Sángli from very ancient days, Government will not press their rights, not because they admit that the Treaty is opposed to such a claim, but simply because they have not claimed their rights since the establishment of British rule in the Deccan.

A ferry established in British territory may be declared a public ferry even though the opposite side of the river be in Native territory. The Native States concerned should, however, be urged, if they have not already done so, to promulgate rules similar to those contained in Bombay Act II of 1868, for application to any ferries that may have been or may hereafter be declared by the British Government to be public ferries.

(G. R., P. D., No. 7184, dated 7th December 1886.)

22. The sanction of Government to the entertainment of ferry and toll establishments is necessary.

The management of the tolls and the control of the establishments in the Panch Maháls are vested

* *Vide* proviso to Section 41 of the Local Boards Act No. I of 1884

in the Executive Engineer of the district, but in compliance with the provisions of Rule 31 of the Local Board Rules the establishments must be paid by the Collector on receiving salary bills from the Executive Engineer.

It is not necessary to pension toll and ferry establishments. (G. Rs. Nos. 2469 and 3736, dated, respectively, 28th April 1885 and 9th December 1886; *vide* also G. R., F. D., No. 2750, dated 26th September 1885.)

23. It is clear from clause (*c*) of Section 44 of the Local Boards Act that *all* charges on account of ferries are chargeable to Provincial Revenues, the term "maintenance" including current repairs to existing boats as well as the construction of new ones. This arrangement does not involve any loss to Provincial Revenues, because the gross proceeds after deducting all charges are payable to the Local Funds concerned. (G. R. No. 6949, dated 27th August 1885)

24. The term "maintenance of ferries" in Section 44 of the Local Boards Act undoubtedly includes the provision of boats for working the ferries, and no modification of the orders issued in Government Resolution No. 6949, dated 27th August 1885, is required. It should, however, be understood that ferries do not include approaches to them and piers, which if constructed by Local Fund Committees and Local Boards vest in the Boards, in which case they are responsible for the maintenance and repair of them.

If the cost of working public ferries exceeds the receipts, the Local Boards are not bound to make good the deficit. But there ought to be no deficits. Public ferries ought to be so managed as to pay, and heavy charges for approaches, &c., should not be incurred from the Ferry Fund but by Local Boards.

(G. R., F. D., No. 265, dated 2nd February 1886.)

25. Under Section 44 of the Local Boards Act, 1884, the net proceeds of the cess on land, of all public ferries and of all tolls on roads and bridges, &c., are to be credited to the Local Fund of the District. The collection and maintenance charges must, therefore, be debited to Provincial Services in the Government accounts. The Accountant General is authorized to admit to the debit of Provincial Revenues all charges of this nature. Charges on account of repairs to ferry boats and the construction of new ferries carried out by Public Works agency should be adjusted at the treasury on bills signed by the Executive Engineer, the credit appearing as a remittance to the treasury by the Public Works Department. (G. R., F. D., No. 2625, dated 14th September 1885.)

26. There is no objection to a Local Board under Section 30 (*a*) of the Local Boards Act spending money on a ferry boat. No charge should fall on

Provincial Revenue which hands over the whole of the net receipts under Secton 44 (*c*) of the Act. (G. R., F. D., No. 1182, dated 27th April 1886.)

27. The Collector is the proper authority to sanction the estimates for the construction or repairs of road toll-houses and ferry-boats, when the expenditure is to be met from the receipts and is to be charged to Provincial Revenues; but when the expenditure is in excess of the receipts, and the Local Boards are called upon to make good the deficit, the Collector should pass the estimates after consulting the Local Boards concerned. (G. R., F. D., No. 2752, dated 9th September 1886.)

28. If the cost of construction of a new boat is provided by Provincial Funds, the amount will have to be recovered before any surplus is handed over to the Local Board. It, therefore, comes to the same thing so far as their funds are concerned, whether the money is provided from Provincial or Local resources. In these circumstances it will be best that the Local Fund should provide the assignment required for a new boat, and if they can show that the cost will involve a genuine deficit, Government will be ready to consider their claim for aid from Provincial Funds. (G. R., F. D., No. 3646, dated 2nd December 1886.)

29. Any property of Government may be vested under executive orders, in any Local Board willing to receive it.

Bombay Act II of 1868, the Ferries Act, is throughout based upon the assumption that public ferries are the property of Government. It would be difficult, if not impossible, to work Sections 4 and 5 of the Act, if the ferries and the boats and other implements appertaining to them belonged to Local Boards.

If it is thought desirable to vest public ferries in Local Boards, an Act would be necessary (1) to make them responsible for the due maintenance of ferries in such places as Government prescribe and (2) to enable them to be invested with all or any of the powers of Government under Bombay Act II of 1868.

(L. R. No. 1629, dated 18th December 1886; *vide* G. R., F. D., No. 245, dated 19th January 1887.)